

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID LUDD, T-78190,)	
)	
Plaintiff(s),)	No. C 10-2087 CRB (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
M. CASTRO, et al.,)	
)	
Defendant(s).)	

Plaintiff, a prisoner at Salinas Valley State Prison (SVSP), has filed a pro se civil rights complaint under 42 U.S.C. § 1983 alleging that he received inadequate medical care upon arriving at SVSP.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
2 elements: (1) that a right secured by the Constitution or laws of the United States
3 was violated, and (2) that the alleged violation was committed by a person acting
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

5 B. Legal Claims

6 Plaintiff alleges that, on June 29, 2009, he was transferred to SVSP and
7 told that he would be seen by a doctor as part of the receiving process. Two days
8 later, on July 1, 2009, plaintiff complained to nurse M. Castro that he suffered
9 from chronic lower back pain and had yet to see a doctor. Castro explained that
10 plaintiff should be seen by a doctor soon.

11 On July 3, 2009, while Castro was dispensing medications to inmates, she
12 walked up to plaintiff's cell and gave him a pill. She again gave him the same pill
13 on July 4, 2009.

14 On July 5, 2009, as Castro approached plaintiff's cell and gave the same
15 pill a third time, plaintiff informed her that he had been urinating blood and
16 throwing up. Plaintiff asked what type of medication she was giving him. Castro
17 asked plaintiff his name and, when plaintiff responded "David Ludd," realized
18 that she had made a mistake and had given him another inmate's medication.

19 On July 15, 2009, plaintiff filed an inmate grievance complaining of
20 Castro's mistake and seeking to see a doctor for his chronic lower back pain.

21 On July 24, 2009, plaintiff was seen by a doctor on the "MD line." The
22 doctor prescribed pain medication (Naproxen and Methocarbamol) and referred
23 plaintiff for a "LS spine MRI."

24 Plaintiff claims that the administering of another inmate's medication to
25 him and the delay in his receiving care for his chronic lower back pain amounted
26 to deliberate indifference to his serious medical needs.

1 Deliberate indifference to serious medical needs violates the Eighth
2 Amendment's proscription against cruel and unusual punishment. Estelle v.
3 Gamble, 429 U.S. 97, 104 (1976). A "serious medical need" exists if the failure
4 to treat a prisoner's condition could result in further significant injury or the
5 "unnecessary and wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050,
6 1059 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part on other
7 grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir.
8 1997) (en banc). A prison official is "deliberately indifferent" only if he knows
9 that a prisoner faces a substantial risk of serious harm and disregards that risk by
10 failing to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837
11 (1994).

12 Negligence alone does not warrant liability under the Eighth Amendment.
13 Id. at 835-36 & n4. An "official's failure to alleviate a significant risk that he
14 should have perceived but did not, . . . cannot under our cases be condemned as
15 the infliction of punishment." Id. at 838. Instead, "the official's conduct must
16 have been 'wanton,' which turns not upon its effect on the prisoner, but rather,
17 upon the constraints facing the official." Frost v. Agnos, 152 F.3d 1124, 1128
18 (9th Cir. 1998) (citing Wilson v. Seiter, 501 U.S. 294, 302-03 (1991)). Prison
19 officials violate their constitutional obligation only by "intentionally denying or
20 delaying access to medical care." Estelle, 429 U.S. at 104-05.

21 Although regrettable, plaintiff's allegations regarding Castro's "mistake" in
22 giving him another inmate's medication on July 3, 4 and 5, 2009 must be
23 dismissed because they do not amount to more than a claim for negligence or
24 medical malpractice not cognizable under § 1983. See Toguchi v. Chung, 391
25 F.3d 1051, 1060-61 (9th Cir. 2004); Hallett v. Morgan, 296 F.3d 732, 744 (9th
26 Cir. 2002). And the same rationale applies to his allegations of delay in seeing a
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1 doctor for his chronic lower back pain. See, e.g., Frost, 152 F.3d at 1130 (finding
 2 no merit in claims stemming from alleged delays in administering pain
 3 medication, treating broken nose and providing replacement crutch, because
 4 claims did not amount to more than negligence); O'Loughlin v. Doe, 920 F.2d
 5 614, 617 (9th Cir. 1990) (finding that isolated occurrences of neglect may
 6 constitute grounds for medical malpractice but do not rise to level of unnecessary
 7 and wanton infliction of pain). After all, the attachments to the complaint make
 8 clear that plaintiff was seen by a doctor for his chronic lower back pain only days
 9 after he filed an inmate grievance seeking to see a doctor, and that the doctor
 10 prescribed him pain medication and gave him a referral for a spine MRI.¹

11 CONCLUSION

12 For the foregoing reasons, the complaint is DISMISSED for failure to
 13 state claim under the authority of 28 U.S.C. § 1915A(b).

14 The clerk shall enter judgment in accordance with this order, terminate all
 15 pending motions as moot, and close the file.

16 SO ORDERED.

17 DATED: Sept. 3, 2010

18 
 CHARLES R. BREYER
 United States District Judge

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 24 ¹To whatever extent plaintiff takes issue with the medical care he has
 25 received since his first medical consultation at SVSP on July 23, 2009, he must
 26 do so in a new action after exhausting available administrative remedies. The
 27 attachments to the complain make clear that the inmate grievances plaintiff has
 28 exhausted so far only deal with Castro's "mistake" and his initial request to see a
 doctor for chronic lower back pain, which he saw on July 23, 2009.